House Bill 2582

Sponsored by Representative MORGAN; Representative HELFRICH, Senator THATCHER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor’s brief statement of the essential features of the measure as introduced.

Provides that parent or legal guardian may be notified of minor’s consent to treatment. Modifies definition of “personal representative” for purposes of protected health information to include parents of unmarried and unemancipated minors.

A BILL FOR AN ACT


Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 109.650 is amended to read:

109.650. (1) A provider of hospital, medical or surgical care to a minor under ORS 109.610 may notify the minor’s parent or legal guardian of the minor’s diagnosis or treatment.

(2) A hospital or a physician, physician assistant, nurse practitioner, naturopathic physician, dentist or optometrist providing information, services, care, diagnosis or treatment to a minor as described in ORS 109.640 may advise or notify the minor’s parent or legal guardian of the information, services, care, diagnosis or treatment provided to the minor or the need for any treatment of the minor.

(3) Parental notification under this section may be made without the consent of the minor, and the hospital or a physician, physician assistant, nurse practitioner, naturopathic physician, dentist or optometrist is not liable for advising or notifying the parent or legal guardian without the consent of the minor.

SECTION 2. Section 3 of this 2023 Act is added to and made a part of ORS 109.675 to 109.695.

 As used in ORS 109.675 to 109.695:

(1) “Mental health care provider” means a physician or physician assistant licensed by the Oregon Medical Board, psychologist licensed by the Oregon Board of Psychology, nurse practitioner registered by the Oregon State Board of Nursing, clinical social worker licensed under ORS 675.530, professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists, naturopathic physician licensed under ORS chapter 685 or community mental health program established and operated pursuant to ORS 430.620 when approved to do so by the Oregon Health Authority pursuant to rule.

(2) “Minor” means a person who has not arrived at the age of majority, as described in ORS 109.510.

SECTION 3. ORS 109.675 is amended to read:

109.675. (1) A minor 14 years of age or older may obtain, without parental [knowledge or] con-
sent, outpatient diagnosis or treatment of a mental or emotional disorder or a chemical dependency, excluding methadone maintenance, by a mental health care provider. [physician or physician assistant licensed by the Oregon Medical Board, a psychologist licensed by the Oregon Board of Psychology, a nurse practitioner registered by the Oregon State Board of Nursing, a clinical social worker licensed by the State Board of Licensed Social Workers, a professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists, a naturopathic physician licensed by the Oregon Board of Naturopathic Medicine or a community mental health program established and operated pursuant to ORS 430.620 when approved to do so by the Oregon Health Authority pursuant to rule.]

(2) [However,] The person providing treatment under this section shall have the parents of the minor involved before the end of treatment unless the parents refuse or unless there are clear clinical indications to the contrary, which shall be documented in the treatment record. The provisions of this subsection do not apply to:

(a) A minor who has been sexually abused by a parent; or
(b) An emancipated minor, whether emancipated under the provisions of ORS 109.510 and 109.520 or 419B.550 to 419B.558 or, for the purpose of this section only, emancipated by virtue of having lived apart from the parents or legal guardian while being self-sustaining for a period of 90 days prior to obtaining treatment as provided by this section.

SECTION 5. ORS 109.680 is amended to read:

ORS 109.680. [(1) As used in this section, “mental health care provider” means a physician or physician assistant licensed by the Oregon Medical Board, psychologist licensed by the Oregon Board of Psychology, nurse practitioner registered by the Oregon State Board of Nursing, clinical social worker licensed under ORS 675.530, professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists, naturopathic physician licensed under ORS chapter 685 or community mental health program established and operated pursuant to ORS 430.620 when approved to do so by the Oregon Health Authority pursuant to rule.]

[(2)(a)] (1)(a) A mental health care provider that is providing services to a minor pursuant to ORS 109.675 may disclose relevant health information about the minor without the minor's consent as provided in ORS 109.675 (2) and this subsection.

(b) If the minor's condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary, or if the minor's condition requires detoxification in a residential or acute care facility, the minor's mental health care provider may disclose the relevant information regarding the minor's diagnosis and treatment to the minor's parent or legal guardian to the extent the mental health care provider determines the disclosure is clinically appropriate and will serve the best interests of the minor's treatment.

(c) If the mental health care provider assesses the minor to be at serious and imminent risk of a suicide attempt but inpatient treatment is not necessary or practicable:

(A) The mental health care provider shall disclose relevant information about the minor to and engage in safety planning with the minor's parent, legal guardian or other individuals the provider reasonably believes may be able to prevent or lessen the minor's risk of a suicide attempt.

(B) The mental health care professional may disclose relevant information regarding the minor's treatment and diagnosis that the mental health care professional determines is necessary to further the minor's treatment to those organizations, including appropriate schools and social service entities, that the mental health care provider reasonably believes will provide treatment support to the minor to the extent the mental health care provider determines necessary.
(d) Except as provided in ORS 109.675 (2) and paragraphs (a) and (b) of this subsection, if a mental health care provider has provided the minor with the opportunity to object to the disclosure and the minor has not expressed an objection, the mental health care provider may disclose information related to the minor's treatment and diagnosis to individuals, including the minor's parent or legal guardian, and organizations when the information directly relates to the individual's or organization's involvement in the minor's treatment.

[(3)] (2) Notwithstanding subsection [(2)(c)(A)] (1)(c)(A) of this section, a mental health care provider is not required to disclose the minor's treatment and diagnosis information to an individual other than the minor's parent or legal guardian if the mental health care provider:

(a) Reasonably believes the individual has abused or neglected the minor or subjected the minor to domestic violence or may abuse or neglect the minor or subject the minor to domestic violence;

(b) Reasonably believes disclosure of the minor's information to the individual could endanger the minor; or

(c) Determines that it is not in the minor's best interest to disclose the information to the individual.

[(4)] (3) Nothing in this section is intended to limit a mental health care provider's authority to disclose information related to the minor with the minor's consent.

[(5)] (4) If a mental health care provider discloses a minor's information as provided in subsection (1) [or (2)] of this section in good faith, the mental health care provider is immune from civil liability for making the disclosure without the consent of the minor.

SECTION 6. ORS 109.685 is amended to read:

109.685. A [physician, physician assistant, psychologist, nurse practitioner, clinical social worker licensed under ORS 675.530, professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists, naturopathic physician licensed under ORS chapter 685 or community mental health program described in ORS 109.675] mental health care provider who in good faith provides diagnosis or treatment to a minor as authorized by ORS 109.675 [shall not be] is not subject to any civil liability for providing such diagnosis or treatment without consent of the parent or legal guardian of the minor.

SECTION 7. ORS 192.556 is amended to read:

192.556. As used in ORS 192.553 to 192.581:

(1) “Authorization” means a document written in plain language that contains at least the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;

(b) The name or other specific identification of the person or persons authorized to make the requested use or disclosure;

(c) The name or other specific identification of the person or persons to whom the covered entity may make the requested use or disclosure;

(d) A description of each purpose of the requested use or disclosure, including but not limited to a statement that the use or disclosure is at the request of the individual;

(e) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;

(f) The signature of the individual or personal representative of the individual and the date;

(g) A description of the authority of the personal representative, if applicable; and

(h) Statements adequate to place the individual on notice of the following:
(A) The individual’s right to revoke the authorization in writing;
(B) The exceptions to the right to revoke the authorization;
(C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization; and
(D) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected.

(2) “Covered entity” means:
(a) A state health plan;
(b) A health insurer;
(c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.553 to 192.581; or
(d) A health care clearinghouse.

(3) “Health care” means care, services or supplies related to the health of an individual.

(4) “Health care operations” includes but is not limited to:
(a) Quality assessment, accreditation, auditing and improvement activities;
(b) Case management and care coordination;
(c) Reviewing the competence, qualifications or performance of health care providers or health insurers;
(d) Underwriting activities;
(e) Arranging for legal services;
(f) Business planning;
(g) Customer services;
(h) Resolving internal grievances;
(i) Creating deidentified information; and
(j) Fundraising.

(5) “Health care provider” includes but is not limited to:
(a) A psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675 or an employee of the psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist;
(b) A physician or physician assistant licensed under ORS chapter 677, an acupuncturist licensed under ORS 677.759 or an employee of the physician, physician assistant or acupuncturist;
(c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;
(d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
(e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;
(f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;
(g) An emergency medical services provider licensed under ORS chapter 682;
(h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
(i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;
(j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic
physician;

(k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical imaging licensee;

(o) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory care practitioner;

(p) A polysomnographic technologist licensed under ORS 688.819 or an employee of the polysomnographic technologist;

(q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

(r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;

(s) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

(t) A health care facility as defined in ORS 442.015;

(u) A home health agency as defined in ORS 443.014;

(v) A hospice program as defined in ORS 443.850;

(w) A clinical laboratory as defined in ORS 438.010;

(x) A pharmacy as defined in ORS 689.005; and

(y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(6) “Health information” means any oral or written information in any form or medium that:

(a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(7) “Health insurer” means an insurer as defined in ORS 731.106 who offers:

(a) A health benefit plan as defined in ORS 743B.005;

(b) A short term health insurance policy, the duration of which does not exceed three months including renewals;

(c) A student health insurance policy;

(d) A Medicare supplemental policy; or

(e) A dental only policy.

(8) “Individually identifiable health information” means any oral or written health information in any form or medium that is:

(a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:
(A) The past, present or future physical or mental health or condition of an individual;
(B) The provision of health care to an individual; or
(C) The past, present or future payment for the provision of health care to an individual.
(9) “Payment” includes but is not limited to:
(a) Efforts to obtain premiums or reimbursement;
(b) Determining eligibility or coverage;
(c) Billing activities;
(d) Claims management;
(e) Reviewing health care to determine medical necessity;
(f) Utilization review; and
(g) Disclosures to consumer reporting agencies.
(10) “Personal representative” includes but is not limited to:
(a) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with authority to make medical and health care decisions;
(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;
(c) A person appointed as a personal representative under ORS chapter 113; [and]
(d) A person described in ORS 192.573; and
(e) The parent or legal guardian of an unmarried and unemancipated person under 18 years of age.
(11)(a) “Protected health information” means individually identifiable health information that is maintained or transmitted in any form of electronic or other medium by a covered entity.
(b) “Protected health information” does not mean individually identifiable health information in:
(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);
(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or
(C) Employment records held by a covered entity in its role as employer.
(12) “State health plan” means:
(a) Medical assistance as defined in ORS 414.025;
(b) The Cover All People program; or
(c) Any medical assistance or premium assistance program operated by the Oregon Health Authority.
(13) “Treatment” includes but is not limited to:
(a) The provision, coordination or management of health care; and
(b) Consultations and referrals between health care providers.